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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
DOCKETS
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Joint Application of

AMERICAN AIRLINES, INC.

and

BRITISH AIRWAYS PLC

under 49 U.S.C. §§ 41308-41309 for approval of
and antitrust immunity for agreement

Docket OST-2001-10387 -95

Joint Application of

AMERICAN AIRLINES, INC.

and

BRITISH AIRWAYS PLC

under 14 C.F.R. Part 212 for statements of
authorization (blanket codesharing) and
under 49 U.S.C. § 40109 for related exemption
authority

Docket OST-2001-10388 -71

UNITED AIR LINES, INC.,
BRITISH MIDLAND AIRWAYS LIMITED,
AUSTRIAN AIRLINES, OSTERREICHISCHE
LUFTVERKEHRS AG,
LAUDA AIR LUFTFAHRT AG,
DEUTSCHE LUFTHANSA, A.G.,

and

SCANDINAVIAN AIRLINES SYSTEM

under 49 U.S.C. §§ 41308-41309 for approval of
and antitrust immunity for an Alliance
Expansion Agreement and an Amended
Coordination Agreement

Docket OST-2001-10575 -10

Joint Application of

UNITED AIR LINES, INC.

and

BRITISH MIDLAND AIRWAYS LIMITED

under 14 C.F.R. Part 212 for statements of
authorization (blanket codesharing) and
under 49 U.S.C. § 40109 for related exemption
authority

Docket OST-2001-10576 -3

**MOTION OF NORTHWEST AIRLINES, INC.
TO CONSOLIDATE PROCEEDINGS**

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Dated: October 31, 2001

**BEFORE THE
MENT OF TRANSPORTATION
WASHINGTON, D.C.**

Joint Application of

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**under 49 U.S.C. §§ 41308-41309 for approval of
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Docket OST-2001-10388

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and

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Docket OST-2001-10575

Joint Application of

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BRITISH MIDLAND AIRWAYS LIMITED

**under 14 C.F.R. Part 212 for statements of
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under 49 U.S.C. § 40109 for related exemption
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Docket OST-2001-10576

Dated: October 31, 2001

**MOTION OF NORTHWEST AIRLINES, INC.
TO CONSOLIDATE PROCEEDINGS**

Northwest Airlines, Inc. ("Northwest") moves the Department to consolidate the American Airlines, Inc.-British Airways Plc ("American-BA") alliance proceeding (Dockets OST-01-10387/10388) with the United Air Lines, Inc.-British Midland Airways Limited ("United-bmi") alliance proceeding (Dockets OST-01-10575/10576).¹

These two highly interrelated matters should be reviewed and resolved by the Department in the course of a single proceeding, in order to ensure that the Department fully considers all of the evidence relevant to both proposed alliances, and to avoid the needless re-argument and reconsideration of common issues by interested parties and the Department itself that will necessarily occur if the two proposed alliances are considered separately. Moreover, as with the

¹ This is the appropriate time to seek consolidation of these two proceedings. As of today's date, the Department has not granted interested parties access to the United-bmi confidential documents, issued a scheduling order, or taken any other action with respect to the United-bmi alliance. In fact, the Department has determined that the United-bmi antitrust immunity application is not complete and, accordingly, is waiting until that application is complete to (continued...)

proposed American-BA alliance, the Department should not act on the proposed United-bmi alliance until an open skies agreement with the United Kingdom is signed. Prior action by the Department with respect to either proposal would be premature and unwarranted.

Alternatively, if the Department does not formally consolidate the proceedings, the Department should consider both alliance proposals in one decision and authorize the parties to use the confidential portion of the evidence in each proceeding in presenting arguments in the other proceeding. While not seeking postponement of the answer and reply dates in the American-BA proceeding, Northwest requests that, under either alternative, the Department authorize the parties in the American-BA alliance proceeding to file supplemental Answers based on any relevant evidence in the documents submitted by United-bmi and their Star Alliance partners on October 18, 19, and 22 and to which the parties do not yet have access.

1. The Proposed American-BA Alliance And The Proposed United-bmi Alliance Involve The Same Issues And Evidence.

The Department currently has before it the applications for antitrust immunity and related code-share authorizations of American and BA, filed on August 10, 2001. See OST Notices dated August 16 and August 27, 2001. On September 5, 2001, United and bmi also filed applications for blanket codesharing authority and antitrust immunity. The applications will involve much of the same evidence and will require the Department to resolve many of the same issues concerning the competitive effects of the proposed alliances on the critical U.S.-Heathrow and other markets.

(...continued)

announce a procedural schedule. Notice Suspending Procedural Dates, OST-01-10575/10576 (Sept. 13, 2001).

The Department's decision on the proposed United-bmi alliance will necessarily involve consideration of many of the material issues that lie at the core of the proposed American-BA alliance, in particular the existence of barriers to entry; the need to ensure adequate competitive access to London Heathrow for U.S. carriers; the concentration in the relevant U.S.-U.K. markets; the market power of the proposed alliances in the relevant U.S.-U.K. markets; and what impact immunizing the alliances (and thereby giving the two largest U.S. carriers a fortress-like position at the most important foreign point for U.S. travelers) would have on the domestic market at a time when U.S. carriers are under significant financial duress. Accordingly, the American-BA and United-bmi applications must be combined into a single proceeding.

Reviewing the Vaughn indices of confidential documents submitted by United and bmi, even without access to the documents themselves, confirms that the proposed alliances will share many issues: United has submitted documents concerning "LHR Slot Holdings" (UA 001309); "Star Alliance Heathrow Master Plan" (UA 001310-001357); and "Email Report on BA Sales Strategy" (UA 001946-001948). bmi has submitted documents concerning "Transatlantic Services from LHR and LGW -- July 2000" (BD 0015); "Transatlantic Services from LHR/LGW/MAN -- July 2000" (BD 0073-0075); "Heathrow Future Requirements 2001-2002" (BD 0089-0093); "Our Future Requirements at Heathrow Airport" (BD 0094-0172); "BD-UA Joint Venture Contract Timelines and Issues" (BD 0946); and several additional documents that appear to concern bmi's Heathrow presence (see BD 1365-1371). Any or all of these documents could be directly relevant to the American-BA proceeding, but in order to be certain, interested parties must have the opportunity to review these documents and assess their significance.

The four Joint Applicants concede that the two proposed alliances are closely related, as they all argue that the presence of the other alliance strengthens the case for their own

combination. United and bmi state that their alliance is necessary to develop "a strong, albeit smaller, competitive alternative" to the American-BA alliance at Heathrow. United-bmi ATI Application at 5; see id. at 8-10, 37-38. American and BA go further. Not only do they argue that United and bmi will make for an effective competitive counterweight to their own combination, asserting that the United-bmi alliance is one of a number of "profound changes" that have occurred in international aviation since the first American-BA attempt to ally in 1996-98. American-BA ATI Application at 5; see id. at 13-14, 35. They also argue that they need immunity to respond to an immunized United-bmi alliance, stating that

[a]s long as their alliance remains non-immunized, American and British Airways are handicapped against other immunity-assisted alliances that are able to generate traffic gains through improved and fully coordinated services and lower fares. . . . In the context of the U.S.-London market, alliance competition has taken on even more significance with BMI's recent entry into the Star Alliance.

Id. at 8-9 (referring to further detail on each of the major alliances in Exhibit JA-2).

Consolidation of these proceedings is, therefore, necessary to allow the Department (and interested parties) to assess each of the proposed alliances in the context of the other. The potential combined effects of the proposed alliances must be evaluated in their totality and not on an unconsolidated, piecemeal basis. Consolidation is a necessary and logical action.

2. Both Alliances Are Conditioned On A U.S.-U.K. Open Skies Agreement.

The Joint Applicants' submissions are similar in yet another significant respect. The United-bmi ATI Application, like the American-BA ATI Application, is expressly conditioned on the signature of an Open Skies Agreement between the U.S. and U.K. Governments. See United-bmi ATI Application at 25; American-BA ATI Application at 2. The Department itself has repeatedly emphasized (in the first American-BA alliance proceeding, among many others) that a grant of antitrust immunity must be preceded by agreement on de facto open skies with the

relevant foreign government. See, e.g., Order 97-3-34, at 4 (Mar. 21, 1997); Order 99-7-22, at 2 (July 30, 1999). In the case of the U.K., de facto open skies includes guarantees of adequate access to Heathrow for U.S. carriers. See, e.g., Order 97-3-34, at 4; Order 99-7-22, at 2. Thus, as is the case with the proposed American-BA alliance, the Department should not act on the proposed United-bmi alliance until an open skies agreement with the United Kingdom is signed. Prior action by the Department with respect to either proposed alliance would be clearly premature and unwarranted.

3. Due Process Concerns Compel Consolidation.

Due process considerations compel the Department to consider one alliance as it assesses the other. Given the unquestionable interrelationship of the applications, a record in either proceeding that does not incorporate and account for material facts and evidence from the other would necessarily be incomplete. To make their arguments fully and to develop a complete record, Northwest (and all other interested parties) must be able to assess the submission made on behalf of one proposed alliance in the process of considering the other proposed alliance. In this regard, all interested parties must have simultaneous access to the confidential documents submitted by all four Joint Applicants and must be allowed to use the documents (for instance, the United and bmi documents cited above) from one proposed alliance in connection with the other.

That cannot happen currently for two reasons. First, the Department must affirmatively permit the parties to use documents from one set of applications in connection with the other. At present, affiants may only use information taken from American-BA confidential documents for the purpose of participating in the American-BA proceeding; there is every reason to expect that the same restriction will govern use of the United-bmi-Star Alliance partners' documents.

Second, interested parties do not yet have access to the confidential documents filed with the Department by United, bmi, and their Star Alliance partners. Indeed, the Department has not even issued a notice stating that the United-bmi submission is complete. Thus, there is no assurance that the interested parties will even have access to the full complement of United-bmi materials before the November 2 deadline for answers in the American-BA proceeding. As a result, reviewing those materials and incorporating them into a timely answer to the proposed American-BA alliance will be impossible.

Finally, fundamental principles of administrative efficiency support the consolidation of the two proceedings. It would be a waste of the Department's time and resources -- as well as the time and resources of interested parties -- to conduct two separate, uncoordinated proceedings that involve much of the same evidence and require resolution of the same core issues.

WHEREFORE, Northwest respectfully requests that the Department consolidate Dockets OST-01-10387/88 and OST-01-10575/76 into a single proceeding. In the alternative, the Department should consider both alliance proposals in one decision and authorize the parties to use the confidential portion of the evidence in each proceeding in presenting their arguments in the other proceeding. Under either alternative, Northwest requests that the Department allow the parties in the American-BA alliance proceeding to file supplemental Answers based on any relevant evidence in the documents submitted by United-bmi and their Star Alliance partners on October 18, 19, and 22 and to which the parties do not yet have access.

Respectfully submitted,

A handwritten signature in black ink, reading "Megan Rae Rosia", written over a horizontal line.

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